

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Timothy Charley, #265146,) Civil Action No.: 6:14-2151-BHH
)
 Petitioner,)
) **ORDER AND OPINION**
 vs.)
)
State of South Carolina,)
)
 Respondent.)
)

Petitioner Timothy Charley (“Petitioner”) is an inmate at the Allendale Correctional Institution in Fairfax, South Carolina. On May 30, 2014,¹ Petitioner filed a Petition for Writ of Mandamus in this Court to compel the Circuit Court for Orangeburg County to seize the property of the respondent in the state court case. (ECF No. 1 at 2). In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) D.S.C., this matter was referred to United States Magistrate Judge Kevin F. McDonald for pretrial handling. On June 5, 2014, Magistrate Judge McDonald issued a Report and Recommendation (ECF No. 9) recommending that the Court dismiss the Petition without prejudice and without issuance and service of process because this Court lacks subject matter jurisdiction over a request for a Writ of Mandamus directed at the State of South Carolina or the Circuit Court of Orangeburg County.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final

¹This filing date reflects that the envelope containing the petition was stamped as having been received on May 30, 2014, by the South Carolina Department of Corrections. (ECF No.1-9.) *Houston v. Lack*, 487 U.S. 266 (1988) (holding prisoner's pleading is considered filed when given to prison authorities for forwarding to the district court).

determination remains with this Court. See *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The Court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the Magistrate Judge. 28 U.S.C. § 636(b)(1). The Court may also receive further evidence or recommit the matter to the Magistrate Judge with instructions. *Id.* The Court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objections are made.

Plaintiff was advised of his right to file objections to the Report and Recommendation. (ECF No. 9 at 4.) Plaintiff filed no objections to the Report and Recommendation and the time for doing expired on June 23, 2014. In the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005).

After a careful review of the record, the applicable law, and the Report and Recommendation, the court finds the Magistrate Judge’s recommendation to be proper. Accordingly, the Report and Recommendation (ECF No. 9) is incorporated herein by reference and this action is DISMISSED without prejudice and without service of process for lack of subject matter jurisdiction.

IT IS SO ORDERED.

s/ Bruce Howe Hendricks
United States District Judge

Greenville South Carolina
July 10, 2014